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5 SERVICES, INC.
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8 UNITED STATES BANKRUPTCY COURT
9 DISTRICT OF ARIZONA
10

11 In re:

12 RICHARD J. ZIMMER and
LINA M. ZIMMER

13 Debtors.
14

Chapter 13

NO. 2-10-bk-07210-SSC

**OBJECTION TO CONFIRMATION
OF DEBTORS' CHAPTER 13 PLAN**

15 COMES NOW, WELLS FARGO DEALER SERVICES, INC. FKA WACHOVIA
16 DEALER SERVICES, INC., ("WELLS FARGO"), by and through its attorney undersigned, and
17 hereby objects to the confirmation of the Debtors' Plan as currently proposed. WELLS FARGO is
18 the holder of a secured claim against the above named Debtors in the amount of \$13,842.04, plus
19 accruing interest, at the rate of 9.50%. Said sum is secured by a lien on a 2006 CHRYSLER PT
20 CRUISER-VIN #3A8FY7BG86T375653 purchased by the Debtors from WELLS FARGO's
21 assignor on or about April 29, 2008. A copy of said Contract and Title showing WELLS
22 FARGO's liens are attached as Exhibits "A" and "B".
23

24 The Debtors filed this case on March 17, 2010, six hundred eighty seven (687) days after
25 purchasing the vehicle. Clearly, the debt was incurred for the purchase of a vehicle within the
26 910 day period preceding the date the case was filed. WELLS FARGO is objecting to the Plan of
27 the Debtors and is requesting that it not be confirmed because it fails to provide the Creditor the
28 protection required under 11 U.S.C. §1325(a)(5) for the value of the vehicle. The Debtors' Plan

1 has a value of \$5,055.00. However, it is WELLS FARGO's position that pursuant to §1325(a)5,
2 it is entitled to payment of the balance due on the contract, to wit: \$13,842.04 plus interest.

3 Furthermore, the Plan does not provide for the payments to begin immediately in an
4 amount that would protect WELLS FARGO's collateral against depreciation. 11 U.S.C. §361
5 provides that adequate protection may be provided by:

6 **"requiring the trustee (or debtor in possession) to make a cash**
7 **payment or periodic cash payment to such entity, to the extent**
8 **that the stay under §362 of this title, use, sale, or lease under**
9 **§363 of this title or any grant of a lien under §364 of this title**
10 **results in a decrease in the value of such entities interest in such**
11 **property."**

12 The Debtors may argue that because this Creditor is being paid its value of the property in
13 the Plan that it is adequately protected. However, in light of the fact that this property is
14 depreciable, waiting several months does not offer adequate protection to Movant's interest in this
15 property, especially if the Plan is not confirmed or if the Debtors do not make payments
16 thereunder. Thus, to the extent that this vehicle depreciates in value, WELLS FARGO is being
17 deprived the Fifth Amendment protection of their property rights, and at this time for the Court to
18 continue to wait to determine whether or not the Plan will be confirmed the first time around is
19 totally inappropriate. As such, relief should issue in this matter for the immediate payment of
20 adequate protection payments in the amount of \$85.00, until confirmation of the Plan and until
21 regular Plan payments begin in order to protect WELLS FARGO's property against any further
22 erosion of its value.

23 With respect to the release of its lien, WELLS FARGO will not release its lien with
24 respect to its vehicle until such time as the contract balance plus interest is paid in full.

25 Finally, said Plan assigns an interest rate of 4.25% as part of WELLS FARGO's secured
26 value. It is WELLS FARGO's position that it is entitled to its Contract rate of 9.50% on the
27 secured portion of the claim, or at the very least under the "prime plus" formula, 6.25% which is
28 the current prime rate of 3.25% plus an upward adjustment of 3.00%, *Till vs. SCS Credit Corp.*,
541 U.S. 465 (2004).

WHEREFORE, for the reasons stated above, it is respectfully requested that this Court order the Debtors to begin making immediate payments of \$85.00 per month beginning with the first payment made to the Trustee and that said payments are to continue through the Trustee until Confirmation of the Plan and regular Plan payments begin. In addition, it is also requested that in the event of dismissal or conversion of this case that the Trustee pay over to WELLS FARGO the minimum sum of \$85.00 from each payment received from the Debtors as adequate protection payments to the extent that those payments had not been previously made to WELLS FARGO. It is also requested that Plan confirmation be denied unless the Debtors submit a Plan in which WELLS FARGO's contract balance is reflected and the appropriate rate of interest is provided for.

RESPECTFULLY SUBMITTED this 26th day of April, 2010.

JABURG & WILK, P.C.

s/ Ronald M. Horwitz
Ronald M. Horwitz
Attorneys for Movant

COPY of the foregoing mailed
this 26th day of April, 2010 to:

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